IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.687 OF 2004

1) Shri.Krishna Visnu Deshmukh

2) Shri.Anant Krishna Deshmukh

3) Shri.Madhukar Baburao Deshmukh

4) Shri.Prakash Baburao Deshmukh

5) Shri.Nandu Baburao Deshmukh

6) Shri.Dilip Baburao Deshmukh

7) Shri.Maruti Krishna Deshmukh

8) Shri.Jagannath Maruti Deshmukh

9) Shri.Dattatraya Bhikaji Deshmukh

10) Shri.Kashinath Dagdu Deshmukh

11) Shri.Raju Kashinath Deshmukh

All residing at Nandgaon,
Taluka Maval, District Pune.
Through their Power of Attorney
Holder Shri.Khurshid Saifuddin
Bohari, residing at Lonavala
Bohari Society, Taluka Maval,
District Pune. ..**Petitioners**

Versus

1) The Revenue Minister,
State of Maharashtra,
Mantralaya, Mumbai 400 032.

2) The Collector, Pune

3) The Secretary,
Department of Revenue & Forest,
Mantralaya, Mumbai. ..**Respondents**

Mr.S.G.Karandikar for the Petitioners.
Mr.V.P.Malvankar, A.G.P. for Respondent Nos.2 and 3.

CORAM : DR.S.RADHAKRISHNAN &
V.M.KANADE, JJ.

DATE : 21ST AUGUST, 2006.

(JUDGMENT PER : DR.S.RADHAKRISHNAN,J.)

1. By this Petition, the Petitioners are challenging the order dated 17th October, 2002 passed by the Hon'ble Revenue Minister of State of Maharashtra being Respondent No.1 herein.

2. Heard the learned Counsel for the Petitioners and the learned A.G.P. for Respondent Nos.2 and 3. The Respondent No.1 though duly served, remained absent. The brief facts are, that the Petitioners are claiming that their ancestors were the owners of lands Survey Nos.138 and 154 at village Nandgaon, Taluka Maval, District Pune. It appears that the lands were allotted to forefathers of the Petitioners in the year 1885. Some time in the year 1922, the names of the ancestors of the Petitioners were deleted and the suit lands were shown as Government lands. However, it appears that no notice was given to the ancestors of the Petitioners. Being the ancestral property, the Petitioners continued to cultivate the said lands and even in the year 1956, the ancestors of the Petitioners were shown as "Kabjedar" i.e. they were shown in possession. In the year 1995, the Petitioners came to know that though they were in possession of the suit lands being their ancestral property, however the record indicated that the lands were shown as Government lands. In view thereof, the Petitioners had immediately made an application dated 6th July, 1995 to the Collector of Pune, seeking

necessary changes in the Revenue Record.

3. In pursuance of the said application, the Collector of Pune - Respondent No.2 herein had directed by its letter dated 11th September, 1995 to Sub Divisional Officer of Maval to inquire into the matter and submit a report. The Sub Divisional Officer, in turn, by his letter dated 27th September, 1995 directed the Tahsildar, Maval to inquire into the matter and submit a report. The concerned Tahsildar at Maval submitted the report on 6th October, 1995 and requested that the matter should be inquired in accordance with the provisions of section 20(2) of the Maharashtra Land Revenue Code, 1966. The Petitioners, thereafter made an application through its power of attorney holder to the Revenue Minister on 19th July, 1995. In pursuance thereto, the Hon'ble Revenue Minister directed Respondent No.2, by a communication dated 24th January, 1996 directing the Collector Respondent No.2 herein to inquire into the matter in accordance with the provisions of section 20(2) of the Maharashtra Land Revenue Code, 1966 and submit a report within 15 days. As no report was submitted, again a reminder was sent on 20th February, 1996.

4. Accordingly, the Sub Divisional Officer, after the inquiry, submitted a report dated 19th March, 1996 mentioning therein that the lands at Survey No.138 and 154 of village Nandgaon belonged to the Petitioners and it is their ancestral property and the same should be restored to them in accordance with the provisions

of the Bombay Merged Territories Miscellaneous Alienations Abolition Act, 1955. Again on 25th July, 1996 a letter was sent to the Collector -Respondent No.2 herein by the Revenue and Forest Department directing him to take further steps for restoring regrants of land to the Petitioners herein.

5. In the year 1997, the Hon'ble Minister of Forests and Revenue, by his letter dated 15th February, 1997 asked the District Collector, Pune to clarify whether the provisions of the Mumbai Merged Territories Miscellaneous Vatan Abolition Act, 1955 would apply to the suit lands. As no report came from the District Collector, a reminder was again sent. Finally, the Hon'ble Revenue Minister, by his communication dated 28th August, 1997 directed the concerned Officer to remain present along with his entire record.

6. The Department of Revenue again sent a letter on 27th October, 1997 to Respondent No.2- Collector herein directing him to take immediate steps into the subject matter of regrant of lands to the Petitioners and submit a compliance report to it. The Collector - Respondent No.2 herein requested by his communication letter dated 9th January, 1998 seeking specific directions for regrant of lands to the Petitioners. As Respondent No.2 did not comply with the instructions given by Respondent Nos.1 and 3, the Petitioners had filed a Writ Petition No.5577 of 1998 in this Court for a direction that Respondent No.2

should comply with the directions of Respondent Nos.1 and 3. A Division Bench of this Court by an order dated 10th November, 1998 directed Respondent No.2 to comply with the directions given by Respondent Nos.1 and 3 vide letter dated 25th July, 1996. Since there was no compliance, another Petition was filed being Writ Petition No.3413 of 1999 for regrant of said lands and the Respondents should not dispossess the Petitioners from the suit lands. A Division Bench of this Court on 17th July, 2000 was pleased to direct the State Government to consider the report of the Collector and take a decision with regard to the application of the Petitioners for regrant of lands within a period of two months from the date of the order. However, no action was taken by the Respondents in compliance of the said order of the High Court.

7. In the meanwhile, on 9th July, 2002 a Government Resolution was passed by the Department of Revenue and Forests pertaining to the laying down various rules with regard to regrant of inam/vatan lands. The said rules in paragraph-2 of the resolution clarified that no permission is required for regrant of land of Class-two. In view thereof, the Petitioners approached the Respondents for regrant. Instead of regranting a land, the Revenue Minister, by his order dated 17th October, 2002 rejected the application of the Petitioners for regrant.

8. The learned Counsel Mr.Karandikar, who is appearing on behalf of the Petitioners strongly contended that the Hon'ble Revenue Minister has totally not considered the provisions of section 20(2) of the Maharashtra Land Revenue Code, which reads as under :-

> "20(2) Whether any property or any right in or over any property is claimed by or on behalf of the Government or by any person as against the Government, it shall be lawful for the Collector or a survey officer, after formal inquiry of which due notice has been given, to pass an order deciding the claim."

9. The learned Counsel for the Petitioners also contended that already, the Sub Divisional Officer, by his communication dated 19th March, 1996 has clearly came to conclusion that the lands at Survey Nos.138 and 154 at village Nandgaon belongs to the ancestors of the Petitioners and as such, they are entitled to be restored to the Petitioners as per the provisions of the Mumbai Merged Territories Miscellaneous Vatan Abolition Act, 1955. Under these facts and circumstances of the case, the learned Counsel for the Petitioners prays that the matter be remanded back to the Hon'ble Minister for Revenue being Respondent No.1 herein to pass an appropriate order afresh after considering all the aforesaid facts and circumstances of the case especially, the provisions of the section 20(2) of the Maharashtra Land Revenue Code.

10. The learned A.G.P. appearing for the Respondents also could not dispute that the report of the Sub Divisional Officer, Maval Sub Division, Maval District Pune holds that the Petitioners are entitled

for the restoration of the lands, after holding an inquiry under section 20(2) of the Maharashtra Land Revenue Code, 1966. Under the aforesaid facts and circumstances of the case, the impugned order dated 17th October, 2002 stands quashed and set aside and the matter is remanded back to the Hon'ble Revenue Minister - Respondent No.1 herein to enable him to pass an appropriate reasoned order after hearing the Petitioners and considering all the material and also the provisions of section 20(2) of the Maharashtra Land Revenue Code, 1966. The entire exercise shall be completed preferably within a period of six months from today. Rule is accordingly made absolute, however with no order as to costs.

(DR.S.RADHAKRISHNAN,J.)

(V.M.KANADE,J.)